

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

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CASE CLOSURES UNDER
ENFORCEMENT PRIORITY SYSTEM

2002 AUG 15 P 3:16

SENSITIVE

GENERAL COUNSEL'S REPORT

I. INTRODUCTION

The cases listed below have been evaluated under the Enforcement Priority System ("EPS") and identified as low priority, stale, or ADR transfers. This report is submitted in order to recommend that the Commission no longer pursue these cases for the reasons noted below.

II. CASES RECOMMENDED FOR CLOSURE

**A. Cases Not Warranting Further Action Relative to Other Cases
Pending Before the Commission**

EPS was created to identify pending cases that, due to the length of their pendency in inactive status, or the lower priority of the issues raised in the matters relative to others presently pending before the Commission, do not warrant further expenditures of resources. Central Enforcement Docket ("CED") evaluates each incoming matter using Commission-approved criteria that result in a numerical rating for each case.

Closing
these cases permits the Commission to focus its limited resources on more important cases presently pending in the Enforcement docket. Based upon this review, we have identified cases that do not warrant further action relative to other pending matters. We recommend that all cases be closed.¹ Attachment 1 to this report contains a factual

¹ These cases are: RR02L-03 (15th District Democratic Party); MUR 5242 (Michigan Democratic State Central Committee); MUR 5243 (Oberweis for US Senate, Inc.); MUR 5244 (Korski for Congress); MUR 5250 (NRCC Economic Recovery Workshop); MUR 5254 (Hampden-Sydney College); MUR 5257 (Tom Feeney); and MUR 5258 (Tom Feeney for Congress).

summary of each case recommended for closure, the case EPS rating, and the factors leading to the assignment of a low priority.

B. Stale Cases

Effective enforcement relies upon the timely pursuit of complaints and referrals to ensure compliance with the law. Investigations concerning activity more remote in time usually require a greater commitment of resources primarily because the evidence of such activity becomes more difficult to develop as it ages. Focusing investigative efforts on more recent and more significant activity also has a more positive effect on the electoral process and the regulated community. EPS provides us with the means to identify those cases that, remain unassigned for a significant period due to a lack of staff resources for an effective investigation. The utility of commencing an investigation declines as these types of cases age, until they reach a point when activation of such cases would not be an efficient use of the Commission's resources.

We have identified cases that have remained on the Central Enforcement Docket for a sufficient period of time to render them stale. We recommend that cases be closed³ and one case continued to be held open.⁴

³ These cases are: MUR 5036 (*National Education Association*); MUR 5037 (*National Education Association*); MUR 5086 (*Federation for American Immigration Reform*); and MUR 5191 (*Democratic State Central Committee*)
MUR 5042 (*DNC Services Corporation*) is closely related to MURs 4530 (*DNC*), 4531 (*DNC*), 4642 (*DNC*), and 4547 (*John Huang*) presently pending before the Commission, and dismissal at this time seems inappropriate.

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IV. RECOMMENDATIONS

OGC recommends that the Commission exercise its prosecutorial discretion and close the cases listed below effective two weeks from the day that the Commission votes on the recommendations. Closing these cases as of this date will allow CED and the Legal Review Team the necessary time to prepare closing letters and case files for the public record.

1. Decline to open a MUR, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letter in:

RR02L-03

2. Take no action, close the file effective two weeks from the date of the Commission vote, and approve the appropriate letters in:

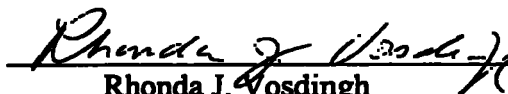
	MUR 5036	MUR 5037
MUR 5086	MUR 5191	
MUR 5242	MUR 5243	MUR 5244
MUR 5250	MUR 5254	MUR 5257
MUR 5258		

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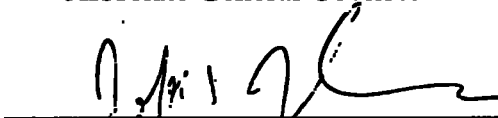
Date



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MUR 5036

Complainant: Landmark Legal Foundation

Respondents: National Education Association ("NEA")
California Teachers Association ("CTA")
Florida Education Association, Inc. ("FEA")
Illinois Education Association ("IEA")
Wisconsin Education Association Council ("WEA")

Allegations: Complainant, Landmark Legal Foundation, alleged that the NEA, CTA, FEA, IEA, WEA (collectively "the respondents") endorsed the election of Democratic Presidential candidate Albert Gore on their publicly available web sites. Thus, respondents allegedly made prohibited contributions to federal candidates in violation of 2 U.S.C. §§ 441b(a) and 441b(2), because they failed to limit their endorsements to their restricted class. The complainant noted that the Commission's opinion in Advisory Opinion 1997-16, which limited a labor organization's endorsement of a candidate to its restricted class, was precedent for finding the respondents had violated the Federal Election Campaign Act ("Act").

Response: Counsel for the NEA submitted a joint response on behalf of the respondents and stated that the NEA had no role in the postings of messages concerning Al Gore that were allegedly made by its affiliates. Further, respondents maintained that the state affiliates to the NEA were maintained as separate and independent legal entities. They also claimed that the postings in question did not violate 2 U.S.C. §§ 441b(a) or 441b(2), because they were *de minimus* in value given their similarities to press releases and were posted on the internet rather than costly advertising media like radio, newspaper, or television. Additionally, the respondents asserted that the Act generally did not apply to web page communications and, therefore, Advisory Opinion 1997-16 should be overruled, or alternatively found unenforceable on procedural grounds.

Date complaint filed: June 26, 2000

Date response received: Joint response from all respondents received on August 28, 2000.